

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,)
)
) No. 2:99-CR-00751-DCN
)
vs.)
)
)
Dwayne Deleston,)
)
)
Defendant/Movant.)
)

 ORDER

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit for entry of an order granting or denying a certificate of appealability. Rule 11(a) of the Rules Governing Section 2255 Proceedings provides that the district court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). An applicant satisfies this standard by establishing that reasonable jurists would find that the district court’s assessment of the constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001).

Here, Deleston does not meet this standard because there is nothing debatable about the court’s resolution of Deleston’s section 2255 motion. The court dismissed Deleston’s motion on the procedural ground that it was a successive motion without pre-filing authorization from the Fourth Circuit. Deleston has filed no fewer than seven

section 2255 motions, and the Fourth Circuit did not grant him pre-filing authorization to file his most recent one. Therefore, the court's dismissal of Deleston's motion as successive is not debatable. Accordingly, the court **DENIES** a certificate of appealability.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David C. Norton".

DAVID C. NORTON
CHIEF UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
January 25, 2010